

**COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. 03-MSRC-009**

**COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF MINES AND MINERALS**

COMPLAINANT

v.

STEVEN E. HENSLEY

RESPONDENT

FINAL ORDER

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant and Respondent Steven E. Hensley, and the members of the Commission having reviewed the Settlement Agreement filed on July 29, 2003 in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY ORDERED as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The Administrative Hearing, scheduled for October 9, 2003 is **CANCELED**;
3. The Respondent, Steven E. Hensley's Underground Miner's Certificate, # ***-**-****, issued by the Commonwealth of Kentucky, shall placed on **PROBATION** for a period of one (1) year, effective July 29, 2003;

4. During said probationary period, if Respondent Hensley willfully violates any state or federal mine safety laws or regulations, the KDMM may file a motion with the Mine Safety Review Commission to revoke certificate # ***-**-**** for the remainder of the one (1) year probationary period;

5. The Settlement Agreement signed by the parties and filed with the Commission shall be incorporated by reference and attached hereto;

6. This Final Order shall be considered to constitute a “first offense” as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent Hensley, resulting in an adjudication of guilt by the Commission, shall be deemed “subsequent offenses” as defined by 805 KAR 8:010, Section 1(13);

7. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, Steven E. Hensley, in this matter. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and

8. **Appellate rights:** Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is requested. A copy of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of

record in this proceeding.

Entered this _____ day of August 2003.

BAYARD V. COLLIER, CHAIR
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this _____ day of August 2003:

STEVEN E. HENSLEY

TURKEY CREEK KY *****

Respondent

And by messenger mail to:

COMMISSIONER FRANK DELZER
DEPT. OF MINES & MINERALS
1025 CAPITAL CENTER DRIVE
FRANKFORT KY 40601

HON. TONY OPPEGARD
GENERAL COUNSEL
DEPT. OF MINES & MINERALS
1025 CAPITAL CENTER DRIVE
FRANKFORT KY 40601

And the original shall be kept on file:

MINE SAFETY REVIEW COMMISSION
132 BRIGHTON PARK BLVD.
FRANKFORT KY 40601

DIANE SCHULER FLEMING
GENERAL COUNSEL
MINE SAFETY REVIEW COMMISSION

KENTUCKY MINE SAFETY REVIEW COMMISSION

KENTUCKY DEPT. OF MINES & MINERALS)	
)	
Complainant)	
)	
v.)	Administrative Action No. 03-MSRC-009
)	
STEVEN E. HENSLEY)	
)	
Respondent)	

SETTLEMENT AGREEMENT

Come the Complainant, the Kentucky Department of Mines & Minerals (“KDMM”; “the Department”) and the Respondent, Steven E. Hensley (“Hensley”), and hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration for the dismissal of this action against him, Hensley admits that he worked in an underground coal mine in Kentucky without first obtaining a certified Kentucky underground miner’s card - as set forth in KDMM’s Complaint against him - and hereby agrees to the **PROBATION OF HIS UNDERGROUND MINER’S CERTIFICATE (# ***-**-****) FOR A PERIOD OF ONE (1) YEAR**, effective upon the signing of this Settlement Agreement by both parties.

During said period of probation, Hensley agrees to comply with all state and federal mine safety and health laws and regulations. The willful violation by Hensley of any of said laws or regulations may result in the Department filing a motion with the Mine Safety Review

Commission (“the Commission”) to revoke Hensley’s underground miner’s certificate for the remainder of the one (1) year probationary period.¹ In that event, Hensley would be entitled to a hearing before the Commission on the allegations against him.

Hensley further agrees that this Settlement Agreement and any final order issued herein by the Mine Safety Review Commission will be considered by the Commission to constitute a “first offense”, as that term is defined at 805 KAR 8:010, Section 1 (5); and that any future adjudication against him by the Commission - regarding a separate alleged offense - will be deemed a “subsequent offense” as defined at 805 KAR 8:010, Section 1 (13).

Hensley understands and agrees that he has had the opportunity to retain an attorney to represent him in this matter, but that he has chosen to represent himself. Hensley further states that he has carefully read and considered this Settlement Agreement prior to signing the Agreement.

KDMM and Hensley acknowledge that there are no other promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.

STEVEN E. HENSLEY

Turkey Creek, Kentucky *****

FRANK X. DELZER, Commissioner
Kentucky Dept. of Mines & Minerals
P.O. Box 2244
Frankfort, Kentucky 40602

¹ If the circumstances warranted, KDMM would also retain the right to file a separate action with the Commission seeking other penalties against the Respondent for his actions.

DATE

DATE

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Settlement Agreement was mailed this
_____ day of July, 2003, to Steven E. Hensley, *****, Turkey
Creek, Kentucky *****.

TONY OPPEGARD
General Counsel

KENTUCKY DEPT. OF MINES & MINERALS